



United States Mission to the OSCE

Session 7: The OSCE's legal framework

As delivered by Andrew Hyde
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At this last substantive session of the Review Conference, we are called upon to consider the legal framework of the OSCE – an important issue that has a very real impact on this Organization's capabilities and effectiveness.

In recent years the United States has been at the forefront of participating States recognizing that the lack of a legal personality hinders the work, effectiveness and efficiency of the institutions, Secretariat and Field Missions for all the reasons accurately described this morning by Sabine Bauer.

It is an issue we have discussed in depth over the past couple of years: last year under the guidance of the Greek Chairmanship, ably led by Dr. Jenny Stavridis, and this year under the thoughtful leadership of our former colleague and the Chair's Personal Representative on this issue, Ida van Veldhuizen. Allow me to observe that the positions of participating States have significantly converged over the past decade, but our ability to reach agreement appears still beyond our grasp.

For the past three years we have had substantive agreement on the text of a Legal Convention on Privileges and Immunities, which a variety of experts have repeatedly told us would directly address the problems the Organization faces and provide a standardized framework for agreements with host nations. I say “substantive agreement” on a text, of course, because the draft document also contains three footnotes inserted by a handful of participating States preconditioning final agreement on approval of a Charter.

While we do not presume to second guess the legal or legislative requirements of other countries – we certainly have more than our share of those - we still fail to see why the Organization's ability to proceed with the Convention should be held hostage to the very different question of whether there should be a foundational document such as a Charter or a Constituent Document. Without such a document, we are told, certain countries would be constrained from signing, or at least ratifying, a Convention. Nevertheless, we believe the OSCE could productively proceed and allow those countries able to do so to sign a Convention and establish a proper legal basis where possible.

So, what is our objection to moving ahead to explore the possibilities of a possible foundational document? Some have suggested that if the OSCE has operated successfully for the past twenty years without one, there is little apparent need. We don't object to that sentiment, but it is not a

sufficient response; we are always open to suggestions for enhancements and improvements. We also face our own significant domestic legal and procedural hurdles to agreeing to any foundational document, but, again, that is not a sufficient reason for us to oppose moving ahead.

What really concerns us is the apparent agenda of those advocating a Charter. That agenda can be summed up with the term “control.” We have listened carefully to the arguments marshaled in favor of a Charter or Constituent Document and they are detailed, well-developed and earnest. We have also studied remarks favoring of greater “balance” and predictability in the operations and work of the institutions of the OSCE. At the beginning of this session of the Review Conference, in fact, we heard an impassioned plea for established rules that would carefully govern the procedures and actions of all the Executive Structures, including ODIHR and the Field Missions. There were also calls for balance among the three dimensions and in OSCE activities East and West of Vienna, suggesting that rather than focusing on where the need is greatest we should adhere to some rigid formula. Our view is substantially different.

The United States feels the solution to this legal question is inherently political, and one that strikes at the heart of what kind of Organization we want and what its niche capabilities are. In our view, a key asset of the OSCE is its flexibility and adaptability. Many of the discussions we have had over the past week in Vienna and earlier in Warsaw ahead of the Astana Summit reflect that reality. While the OSCE first and foremost is a venue for political dialogue and an exchange of views among sovereign states, we also believe it can usefully supplement that role through significant programmatic activity administered by the institutions, especially the Field Missions. That activity necessarily has to be responsive to realities on the ground, identified needs and participating State priorities. Any effort to constrain it would, in our view, be antithetical to the purpose and strengths of the Organization.

So, as we hear about regularizing institutional procedures we cannot help but view the push for a Charter in the same light. Accordingly, we are unable to support moving down a path that would simply provide a ready made context in which certain participating States can seek to impose more constraints on the Organization and its work. Instead, as we have stated before, we should concentrate on adopting the Convention and restoring the OSCE and its operations to full effectiveness.

This should be addressed squarely and forthrightly by any Action Plan approved in Astana. Our leaders should regret the current framework under which the OSCE operates and urge us to redouble our efforts to craft an effective and responsive solution free of additional agendas. The United States remains committed to work toward this goal.